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EXAMINER

RUHL, DENNIS WILLIAM

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/001,766	Applicant(s) MANO ET AL.	
	Examiner Dennis Ruhl	Art Unit 3689	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 10-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
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| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Applicant's response of 5/7/08 has been entered. The examiner will address applicant's remarks at the end of this office action.

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Ferstenberg et al. (5873071).

For claim 1, Ferstenberg discloses a system and method for the sale of commodities. Ferstenberg discloses an intermediary system 40 (that is a server or computer) that allows buyers and seller of a commodity to interact and negotiate with each other concerning the purchase of the commodity. The intermediary system receives information from sellers of commodities and allows buyers to view the information received from sellers, it receives and transmits information. The commodity that is being sold can be anything from stocks and bonds to tangibles such as copper or soy beans, see column 1, lines 14-25. With respect to the limitation that the data to be received is "media content information", this is directed to non-functional descriptive material that does not define any structure to the system being claimed. The data that is to be received has nothing to do with the structure of the claimed elements that actually receive the data. The limitation of "media content information" is directed to the

intended use of the system that does not result in a structural difference from that of the prior art. Ferstenberg discloses that there are seller computers and buyer computers, which are the client systems disclosed in column 39. Each client system is connected via a network to intermediary system. The claimed *input means* is considered to be the hardware and software that the system would necessarily be required to have so that data can be received from a seller. This can be a modem and the software that allows data to be received. The intermediary system inherently has an input means. It must have an input means so that the system can receive data from the sellers and buyers of various commodities as disclosed by Ferstenberg. The claimed *recording means* is considered to be the database of the system 40 and the software that controls the saving of data. This is also inherent to the system 40. The claimed *output means* is the hardware and software that allows system 40 to send out communications to the clients. For system 40 to be able to send communications to the client systems, an output means is necessarily required. The claimed *settlement means* that is for settling a “purchase-and-sale contract” is considered to be the hardware and software that allows the negotiation between the seller and buyer to occur, which results in the a sale occurring. The act of negotiation is done to allow a contract for sale to be arrived at and once that is accomplished, a contract is the result. This satisfies what is claimed. With respect to the fact that claim 1 is reciting that the information received is concerning “media content information” and that the input means is further operable to receive 2nd information indicating purchase rights, a delivery status, and that the recording means can record a money transfer completion message, this has been considered but as far

as the system goes this defines nothing to the system that is not found in Ferstenberg and is directed to the intended use of the system. This is because the commodity that is being sold is not part of the system and claiming a specific commodity does not change the overall system. The system of Ferstenberg and the input means of Ferstenberg are fully capable of receiving the claimed kind of information. The input means is operable to receive any kind of data. Also, the kind of data claimed is directed to non-functional descriptive material. The kind of data that the input means is able to receive does not render the input means any different from that of the prior art input means. Because Ferstenberg can be used with any kind of commodity and because the system is what is being claimed in claim 1 (not the method), Ferstenberg anticipates what is claimed. The recitation that it is "media content information" that is being sold does not result in a structurally different system from that of Ferstenberg. The server 40 is fully capable of generating and transmitting information about a purchase-and-sale contract to another person (escrow agent). The server is disclosed as receiving information and presenting information to both sellers and buyers. This requires that the server have the ability to generate data and transmit it to another computer. This is the operability that applicant has claimed with the only difference being the intended use that is related to non-functional descriptive material (kind of data). This is another recitation directed to just the ability of the server to generate data (can simply be retrieving previously stored data) and the ability to transmit certain types of information, something that is found in Ferstenberg. The server is fully capable of generating information and transmitting it, the specific information claimed is non-functional

descriptive material. The same rationale is true for the recording means. The recording means can record whatever data one wants to record. The data intended to be recorded is non-functional descriptive material. These recitations define nothing further to the system that is not found in Ferstenberg and are directed to the intended use of the system as far as what data applicant intends to use the system with or what data applicant intends to receive, record, or transmit. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

For claim 2, the negotiation aspect of Ferstenberg results in the formation of and storage of a document (the transmitted offers and counteroffers) regarding the sale of the commodity. This satisfies what is claimed.

For claim 3, the input means is fully capable of receiving the claimed information as was discussed with respect to claim 1. It is considered inherent to Ferstenberg that there is a "search means" that will search for matching information that matches the information submitted from the buyer. This is necessarily present in Ferstenberg because when a buyer submits an order for a particular commodity, the system 40 must have some way of determining what clients can satisfy the order desired by the buyer. This is how the matching of a selling client to a buying client happens. The outputs means has already been addressed with respect to claim 1. The system 40 cannot assist in the conducting of a transaction if it cannot be determined who has offered a

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particular commodity for sale that a buyer has expressed an interest in purchasing. As stated previously, the kind of data intended to be received or outputted by various claim elements is directed to the intended use of the system and is considered to be non-functional descriptive material that does not serve as a limitation.

For claim 4, the input means are satisfied by the input means discussed with respect to claim 1. The system 40 stores information concerning the sellers and buyers that interact with system 40, which satisfies what is claimed with respect to the recording means.

For claim 5, this claim is reciting nothing further structurally to the system of claim 1. This is because the “media content rights” are not a structural part of the system. The rights are just what the system is used to sell. Additionally, “rights” are not even a real world tangible thing that can be claimed, so the examiner cannot possibly give weight to what is claimed. A “right” is not a real world thing, but is more of an intangible thing. Claim 5 is directed to non-functional descriptive material.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferstenberg et al. (5873071).

For claims 6-8, Ferstenberg discloses a system and method for the sale of various commodities. Ferstenberg discloses an intermediary system 40 (a computerized system; i.e. a server) that allows buyers and seller of a commodity to interact and negotiate with each other concerning the purchase of the commodity. The intermediary system receives information from sellers of commodities and allows buyers to view the information received from sellers. The commodity that is being sold can be anything from stocks and bonds to tangibles such as copper or soy beans, see column

1, lines 14-25. Ferstenberg discloses that there are seller computers and buyer computers, which are the client systems disclosed in column 39. Each client system is connected via a network to intermediary system 40. The claimed *receiving first content* is considered to be satisfied by the fact that data is received from a seller regarding what commodities are for sale (column 17, lines 51-63). This *information is recorded* as claimed. The claimed *outputting step* is the sending of information to the buyer. This would be information regarding what the seller is selling and would be notification to the buyer that a transaction may be able to be made. The *settlement step* is disclosed in step 14 of Ferstenberg. Ferstenberg disclose that negotiation between the seller and buyer occurs by the transmission of offers and counter offers. The act of negotiation is done to allow a contract for sale to be arrived at and once that is accomplished, a contract is the result. The act of viewing offers and counter offers satisfies the claimed viewing of web pages as claimed. The offers and counter offers are messages as claimed.

For claims 6,7, with respect to the fact that the claim is reciting that the information received is concerning "media content", this is not disclosed by the prior art. Also not disclosed is that information is received indicating the purchase rights of the media content and that information about the delivery of the media content is recorded.

For claim 6, also not disclosed is the receipt of a delivery status message from a physical distribution agent and the recording of information about delivery of the media content.

Also not disclosed for claims 6 and 7 is the limitation of generating and transmitting information about the purchase and sale contract to an escrow agent and receiving a money transfer completion message from the escrow agent.

With respect to the *media content* limitation and the *purchase rights*, because it is disclosed that the commodities can be stocks and bonds, or real world tangible goods (copper), one of ordinary skill in the art would have recognized that the system of Ferstenberg could be used for the selling and buying of any kind of commodity. Because it is very well known in the art to one of ordinary skill in the art that “program content” (broadcasting rights for some kind of media content) is sold by “content producers” and that content is purchased by “broadcasters”, one of ordinary skill in the art at the time the invention was made would have found it obvious to use the system of Ferstenberg for the sale and purchase of television programming rights. This is just using the Ferstenberg for another type of commodity that is widely recognized as already being bought and sold by those involved in television and the media. When one is selling media content, it is considered inherent that there is information indicating what the actual rights are that are being purchased. The rights that are claimed as being received are necessarily involved in the selling of broadcast rights for media content, as is very well known in the art.

With respect to the recording of information about the delivery of the media content and receiving a delivery status message (claim 6), the examiner notes that when media content is being sold it must be delivered to the buyer for the transaction to be completed. One of ordinary skill in the art would clearly understand that the seller of

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the media content and all parties involved in the transaction would want to know when the buyer has received the media content. It would have been obvious to one of ordinary skill in the art at the time the invention was made to deliver the media content to the buyer by using a "physical distribution agent" such as UPS™ or the USPS™ or even Federal Express™ (all of which deliver physical goods and act as a delivery agent) and to further receive a status that indicates the media content was delivered. It is well known in the art of mailing items that the sender can request and receive delivery confirmation on sent items. This is nothing new and the examiner takes "official notice" that this service exists in the prior art. People want to know when their sent packages are delivered. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a delivery agent as claimed (such as USPS) and to receive a delivery status message so that it is known when the media content is delivered to the buyer. With respect to recording the delivery information, it follows that it would have been obvious to record the fact that the buyer has actually received the media content (this can be the recording of the fact that the transaction has occurred and has been completed). This would have been obvious.

With respect to the claimed limitation of generating and transmitting "escrow processing information" to an escrow agent, this limitation is directed to the generation of and transmission of non-functional descriptive material that does not serve as a limitation. The claimed "escrow processing information" is broad language that is not functional and is not reciting that any specific type of information is being transmitted. Also, this information is never even used in any further manipulative step other than

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transmitting and because of this fact patentably distinguishing weight will not be given to data that is just transmitted but never used in any further step. Any data generated and transmitted by Ferstenberg satisfy what is claimed. This is one interpretation the examiner sets forth.

Also and as an alternative interpretation to the limitation of generating and transmitting "escrow processing information ", it is very well known in the art of contracts that escrow accounts are used when sellers are selling various items to a buyer. A third party holds an escrow account and upon the fulfillment of certain conditions will release the content of the account. Escrow accounts and escrow agents are very well known in the art. The examiner takes official notice of this fact. One of ordinary skill in the art at the time the invention was made would have found it obvious to generate and send the relevant information (escrow processing information) to an escrow agent that deals with an escrow account for the media content transaction, because it is commonplace and well known in the art to use a third party (escrow agent) when dealing with sales of items subject to contractual conditions. Then upon the completion or fulfillment of certain conditions, the account is released. The concept of "escrow", which is well known in the art, leads one to a third party agent and if one were using an escrow agent for the media content transaction, that would involve the generating and sending of information to the escrow agent as is claimed. This is considered to be obvious. With respect to the receipt of a message from the escrow agent (money transfer message), this is directed to the receipt of non-functional descriptive material. The content of the message or what the message says is just descriptive material and is not functional. In

this case the mere receipt of anything from an escrow agent satisfies what is claimed because the data claimed as being received is non-functional descriptive material. It would have been obvious to one of ordinary skill in the art to receive some sort of message from the escrow agent, such as when the account is being released.

For claim 7 in addition to that above, when a program is sold by using the system of Ferstenberg, this is “attaching” the “right” to broadcast the purchased media content to the content itself. When a buyer negotiates the purchase of media content by using the system of Ferstenberg, and a sale is made, this is a granting of the “right” for the buyer to broadcast the purchased media content. This satisfies what is claimed. Also, when purchasing commodities (broadcast rights), a request is received from the buyer as claimed that identifies the media content that they wish to purchase. With respect to the limitation of receiving information about how the buyer wants to use the media content, this is another limitation directed to non-functional descriptive material that does not serve as a limitation. This information is never used at all in the claim and is only claimed as being received, which renders it as non-functional descriptive material.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Conklin et al. (6141653).

For claim 9, Conklin discloses a system and method for processing information relating to the sale and purchase of items (commodities). There are *buyers* and *sellers* (8) that use *information processing apparatus*’ (computers, see figure 1a) to communicate over the Internet (a *network*) with an *information processing system* 2,

see column 17, lines 13-34. *Web pages* are used to display information to the buyers and sellers regarding the transactions they are executing (offers, counteroffers, inquiries, etc.). See the summary of invention section of Conklin where the use of the Internet and a website is disclosed. Also see column 19, lines 34-38 where it is disclosed that order activity can be followed by "email or *browser* or similar means.". The step of *receiving first content information from the seller information processing apparatus* is satisfied by a seller in Conklin identifying what it is that they are selling so that buyers can find what they want to buy (via the website and a browser). The *registering* of the received first content is satisfied by storing the information in the database of system 2. The *receipt of 2nd content* is satisfied by a buyer indicating that they desire to buy one of the registered content that is registered on the database of system 2 (via the website and browser). Conklin discloses that messages are sent to and from the buyers and sellers and this includes the types of information that is claimed as well as being done by Internet browser and a website. See column 19, lines 28-38 where it is disclosed that a seller can evaluate orders and other inquiries sent to them. Buyers and sellers are disclosed as being alerted that a pending offer or counteroffer has been submitted. This satisfies the claimed receipt of 1st and 2nd content, which can be inquiries and their responses, offers and counteroffers, etc.. With respect to the generating of 1st and 2nd web pages that displays a message, Conklin discloses that a website is used and that a browser can be used to display information relating to the orders. This is disclosed in column 19, lines 28-38 and satisfies the use of 1st and 2nd web pages to display messages. In Conklin there is necessarily going to

be generated new web pages that display the new information for the order. Each counteroffer or message that is sent and then displayed by browser in Conklin satisfies what is claimed as far as 1st and 2nd web pages go. Also, the content of the message is considered to be non-functional descriptive material because the message itself is not used in any further manner by the claims and is merely descriptive in nature and not functionally related to the overall claim.

Not disclosed is that a site map is maintained that indicates associations between web pages linked to the first web page, where a different web page can be jumped to from the 1st page (linking from one page to another). Also not disclosed is that the content is "media content".

A website that has more than one page is well known in the art, where a home page can link a user to other pages in the same website. Each website has recorded in a system server the associations between different web pages. This is represented by the very well known and common features on websites home pages such as links for "About us" or "Privacy Policy" or "FAQ", etc.. To be able to view different pages it must be stored in the system beforehand what the relationship is between different pages so that when a user clicks on a link that says "About us", they are linked to a page that is informing them about the website or business and is not the page for their privacy policy. The examiner takes "official notice" that it is old and well known in the art to have links on one page that can link to another page. The examiner considers a site map as claimed to be inherent to any website being created that has more than one page to view. One cannot link from one page to another without having a site map as

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claimed so that the server knows what page to display in response to certain links being clicked. This is inherent to a website as it is necessarily 100% required for their operation. The language about the site map and the ability to link to one page from the 1st web page is just providing that page with a link to another page, such as having the "About us" link appear at the bottom of each web page. Having links from the 1st web page to other pages is something that is obvious to one of ordinary skill in the art for the reasons set forth. With respect to the limitation of controlling the posting of the pages, this is satisfied by the fact that the system 2 of Conklin controls the operation of the method that includes the receipt and sending of messages to buyers and sellers, which when this is done by a browser as is disclosed by Conklin, new pages are having their posting controlled by system 2. The acquiring the messages are present in Conklin when the buyers or sellers evaluate offers and orders or counteroffers, etc.. This satisfies what is claimed.

With respect to the *media content* limitation, Conklin discloses that the system can be used for stock or commodity trading. Also disclosed is the use of the system for a trade show for negotiating and transacting in accommodations, placement, footage, vendors. Conklin also discloses more uses for the system in column 18. One of ordinary skill in the art would have recognized that the system of Conklin could be used for the selling and buying of any kind of good or commodity, whether it be stocks or spaces at a trade show. Because it is very well known in the art to one of ordinary skill in the art that "program content" (broadcasting rights for some kind of media content) is sold by "content producers" and that content is purchased by "broadcasters", one of

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ordinary skill in the art at the time the invention was made would have found it obvious to use the system of Conklin for the sale and purchase of media content as claimed.

This is just using Conklin for another type of sold good (media content) that is widely recognized as already being bought and sold by those involved in television and the media. When one is selling media content, it is considered inherent that there is information indicating what the actual rights are that are being purchased. The rights that are claimed as being received are necessarily involved in the selling of broadcast rights for media content, as is very well known in the art.

7. Applicant's arguments filed 5/7/08 have been fully considered but they are not persuasive.

With respect to claims 1-5, the rejection is being maintained. The claims are reciting nothing structurally that is not found in the prior art. The issues of the kind of data *able* to be received, *able* to be recorded, or *able* to be transmitted, this is all directed to the intended use of the system and is also directed to non-functional descriptive material. Applicant has argued that the prior art does not disclose an escrow system management server. This is just the recitation of a server with the words "escrow system management" being just descriptive in nature. Ferstenberg discloses a server 40 that satisfies what is claimed. As far as the server goes all that is claimed is that it can generate information and transmit it to another person. This is present in the prior art. The argument that the prior art does not teach any other parties

being involved other than the users and intermediary is not commensurate with the scope of the claims because the pending claims do not contain any such limitations. Claiming the ability of a server to generate information and transmit it to an escrow agent is quite different from actually claiming that the data is being generated and transmitted. Claim 1 is an apparatus type of statutory claim (not a method) and only the structure of the system is given weight. There is no escrow agent in the scope of claims 1-5. Structurally, the prior art satisfies what is claimed.

With respect to claims 6-8, applicant has argued that the taking of "official notice" by the examiner is improper. Applicant has argued that the examiner must have documentary evidence or produce a signed affidavit that supports the taking of official notice. Applicant stated that the examiner must provide an explicit basis on which the official notice is taken. The examiner notes that the applicant never actually addressed the taking of official notice on the merits with respect to escrows and the use of an escrow agent. This was not addressed or argued on the merits. Applicant never stated that the examiner was incorrect and never took the position that escrows and escrow agents are not well known in the art. Applicant has not actually challenged the taking of official notice on the merits with respect to the issue at hand, which are escrows and escrow agents. With respect to the basis for the taking of official notice, see the rejection of record where this is clearly set forth. The examiner explains the basis in the rejection. With respect to the arguments overall, a "traverse" is a denial of an opposing party's allegations of fact. The Examiner respectfully submits that applicants' arguments and comments do not appear to traverse what the Examiner regards as knowledge that

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would have been generally available to one of ordinary skill in the art at the time the invention was made. This is because the examiner has stated that "it is old and well known that in the art of contracts that escrow accounts are used when sellers are selling various items to a buyer". A third party holds an escrow account and upon the fulfillment of certain conditions will release the content of the account. Escrow accounts and escrow agents are very well known in the art. Even if one were to interpret applicants' arguments and comments as constituting a traverse, applicants' arguments and comments do not appear to constitute an adequate traverse because applicant has not specifically pointed out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. 27 CFR 1.104(d)(2), MPEP 707.07(a). An adequate traverse must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying Examiner's notice of what is well known to one of ordinary skill in the art. In re Boon, 439 F.2d 724, 728, 169 USPQ 231, 234 (CCPA1971). This has not been done. The applicant has simply stated that they want to see evidence from the examiner but has provided no convincing explanation of why the facts alleged by the examiner as old and well known are in fact not well known and why the examiner is incorrect. Applicant's arguments are not considered to be an adequate traversal to the taking of "official notice". The rejection of claims 6-8 will be maintained. The issue of whether or not escrow agents are well known is considered to now be a matter of fact due to the failure by applicant to present a proper and adequate

traversal to the taking of "official notice". The noticed fact is now taken as fact for purposes of the prosecution record.

With respect to escrows and the use of a third party, applicant is referred to common dictionary definitions for "escrow", that based on the definitions themselves are evidence that it is well known in the art to have escrow accounts and use escrow agents (the 3rd party) as the examiner has stated in the taking of official notice. This evidence is provided in support of the taking of official notice by the examiner and is a rebuttal to the alleged traverse of the taking of official notice. Clearly the word "escrow" is old and well known, this fact cannot be disputed. This word escrow has not just recently been invented. The term "escrow" is well known and the definition that is associated with escrow calls for a third party that holds a deposit of some kind and releases it upon the fulfillment of some condition to one part. This is what escrow is by definition. This is cited as some evidence to applicant that this is a well known concept. The definition comes from dictionary.com website.

escrow:

a contract, deed, bond, or other written agreement deposited with a third person, by whom it is to be delivered to the grantee or promisee on the fulfillment of some condition.

to place in escrow: The home seller agrees to escrow the sum of \$1000 with his attorney.

Money, property, a deed, or a bond put into the custody of a third party for delivery to a grantee only after the fulfillment of the conditions specified.

An arrangement where something (generally money or documents) is held in trust ("in escrow") by a trusted third party until certain agreed conditions are met.

The taking of official notice is deemed to be proper due to the lack of a traverse on the merits from applicant as was previously addressed, and based on the evidence provided by the examiner that rebuts any alleged deficiency in the taking of official notice.

For claim 9, the arguments are moot based on new grounds of rejection that was necessitated by amendment.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 571-272-6808. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on 571-272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dennis Ruhl/

Primary Examiner, Art Unit 3689

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